ARTICLES

"Unfit" Women Across the Atlantic: Reproductive Control of Incarcerated Women in the United States and United Kingdom

Allanah Colley*

Abstract

Locked behind bars and out of sight, society has long considered women who are incarcerated to be "unfit" – unfit to be pregnant, unfit to mother, and unfit to make decisions about their own reproductive lives. This article sheds light on the lives of these "unfit" women and the reproductive restrictions they endure while incarcerated in prisons in the United States and United Kingdom. Adopting a reproductive justice lens, this article argues that all women, including our most vulnerable women who are incarcerated, should be able to access the right to safe and dignified fertility management, childbirth and parenting. This article examines the failure to fulfill this right and the reality of reproductive control behind bars in both jurisdictions. That reality includes forced sterilization, inadequate healthcare for pregnant people in prison, the shackling of people giving birth, difficulties faced by mothers trying to maintain ties with their children, as well as restricted access to contraception and abortion services. Using a comparative methodology, this article compares the models of incarceration across the Atlantic and the respective approaches to the reproductive needs of women who are incarcerated. In doing so, this article identifies shared problems and makes several recommendations to ensure that even our most vulnerable women can obtain reproductive justice.

Introduction 3

I. Who are These "Unfit" Women? 4

A. The Profile of Incarcerated Women in the United States and United Kingdom 4

1. A Note About Terminology 4

* Ph.D. Candidate in Law at the University of Melbourne (commencing 2024); LL.M from New York University, Class of 2023; B.A./LL.B (Hons) from the University of Auckland. Allanah is currently working with the United Nations Team of Experts on Rule of Law and Sexual Violence in Conflict and is a Co-Founder and Trustee of the New Zealand Women's Law Journal – Te Aho Kawe Kaupapa Ture a ngā Wāhine. With thanks to Professor Chao-ju Chen for her guidance and support in writing this piece. This article includes the experiences and voices of a group of women who are routinely left out of our conversations and policy reforms – I am grateful to include their perspectives and encourage us all to ensure their voices are heard. © 2023, Allanah Colley.

2. Women Incarcerated in the United States 6
3. Women Incarcerated in the United Kingdom 8
B. CONDEMNED AS "UNFIT" WOMEN 10
C. MOVING TOWARDS A FRAMEWORK OF REPRODUCTIVE JUSTICE 12

II. THE REALITY OF REPRODUCTIVE CONTROL BEHIND BARS 13
A. UNITED STATES 13
1. Forced Sterilization 13
2. Pre and Postnatal Care for Pregnant Women 15
3. Shackling of Women During Labor 17
4. Difficulties for Mothers to Maintain Ties With Children . . 18
5. Access to Contraception and Abortion 19
B. UNITED KINGDOM 20
1. Forced Sterilization 20
2. Pre and Postnatal Care for Pregnant Women 20
3. Shackling of Women During Labor 22
4. Difficulties for Mothers to Maintain Ties With Children . . 22
5. Access to Contraception and Abortion 24
C. HOW DO THESE REALITIES COMPARE? 24

III. A COMPARATIVE ANALYSIS 25
A. INCARCERATION MODELS ACROSS THE ATLANTIC 25
1. United States 26
2. United Kingdom 27
3. Comparative Comments 28
B. A RIGHT TO HEALTHCARE IN PRISON? 29
1. United States 29
2. United Kingdom 30
3. Comparative Comments 31
C. THE INFLUENCE OF INTERNATIONAL NORMS ON PRISON CONDITIONS 31
1. United States 32
2. United Kingdom 33
3. Comparative Comments 33
D. LEGAL APPROACHES TO IMPROVE ACCESS TO REPRODUCTIVE HEALTHCARE 34
1. United States 34
2. United Kingdom 35
3. Comparative Comments 36

IV. CONCLUSION AND RECOMMENDATIONS 36

INTRODUCTION

> *"I knew when you went to jail you gave up some rights, but the rights over your own body?"*
> *—Pamela Forney, an imprisoned woman in Florida, United States.*[1]
> *"I'm handcuffed to an officer in prison uniform, and I'm pregnant and everybody is looking . . . and you can see people, they think 'what has she done?' People shouldn't judge people; they should listen to your story first" – Lola, an incarcerated pregnant woman in the United Kingdom.*[2]

For women like Pamela and Lola, it is commonplace for their reproductive lives and healthcare to be controlled by the authorities responsible for their imprisonment. Women who are incarcerated in the United States and United Kingdom are subject to daily restrictions that inhibit their ability to choose whether to have a child or to parent their children in safe and healthy environments.[3] These restrictions are imposed through various means, including through forced sterilization, inadequate healthcare for pregnant people in prison, the shackling of people giving birth, cutting off ties between mothers and children, as well as restricting access to contraception and abortion.[4] Locked behind bars and out of sight, society has considered incarcerated women "unfit" – unfit to be pregnant, unfit to mother, and unfit to make decisions about their own reproductive lives.

This article seeks to shed light on these "unfit" women and the reproductive restrictions they endure. It does so through three substantive sections. Section II will identify the profile of the women incarcerated in the United States and United Kingdom and consider why women in prison are often invisible in conversations about reproductive rights and justice. This section will also outline why a framework of reproductive justice is needed to understand the experiences of incarcerated women.[5] Section III will examine the reality of reproductive control behind bars in both countries.[6] It will consider some of the various reproductive issues incarcerated women encounter and assess how each country fares on those issues.[7] Section IV will directly compare the models of incarceration across the Atlantic as well as their approaches to the reproductive needs of incarcerated women.[8] It will identify the

1. Rachel Roth, *"She Doesn't Deserve to Be Treated Like This": Prisons as Sites of Reproductive Injustice, in* RADICAL REPRODUCTIVE JUSTICE: FOUNDATIONS, THEORY PRACTICE, CRITIQUE 285, 285 (Loretta Ross, Lynn Roberts, Erika Derkas, Whitney Peoples, & Pamela Bridgewater Toure eds., 2017).
2. Laura Abbott, Tricia Scott, Hilary Thomas, & Kathy Weston, *Pregnancy and Childbirth in English Prisons: Institutional Ignominy and the Pains of Imprisonment* 42 SOCIO. HEALTH & ILLNESS 660, 668 (2020).
3. The three primary principles of the reproductive justice movement are (1) the right not to have a child; (2) the right to have a child; and (3) the right to parent children in safe and healthy environments. *See* LORETTA ROSS & RICKIE SOLINGER, REPRODUCTIVE JUSTICE AND INTRODUCTION 9 (Univ. of Cal. Press ed., 2017).
4. *See infra* Section III(A) (1–5); Id. (B)(1–5).
5. *See infra* Section III.
6. *Id.*
7. *Id.*
8. *See infra Section IV.*

similarities and differences between the two countries across four sub-issues: their models of incarceration, rights to healthcare, the influence of international norms on prison conditions, and the legal strategies that have been used to improve access to reproductive healthcare.[9] In comparing these approaches, the article will identify shared problems and suggest possible solutions to ensure that even our most vulnerable women can obtain reproductive justice.

I. WHO ARE THESE "UNFIT" WOMEN?

As of 2020, there were 700,000 women in prisons worldwide.[10] The female prison population has rapidly expanded in the last twenty years. Since 2000, the female incarceration rate has increased by fifty percent globally, in comparison to the male prison population which has only increased by eighteen percent.[11] Yet, women in prison have often been an afterthought, so much so that when women were first incarcerated they were placed in the attics of men's prisons.[12] It was only in the late nineteenth century that the first standalone prisons for women were developed.[13] Since then, prisons in the Western World have predominantly been designed with male offenders in mind.[14] The rapidly increasing population of women in prison since the end of the twentieth century has been referred to as a "crisis of an invisible population."[15]

This section will examine the profile of incarcerated women in the United States and United Kingdom – who are the women these countries keep locked up? Why have these women been "invisible" and neglected within the prisons of these nations for so long? And, how can we begin to analyze the imprisonment of women through the lens of reproductive justice to treat our women with dignity?

A. THE PROFILE OF INCARCERATED WOMEN IN THE UNITED STATES AND UNITED KINGDOM

1. A Note About Terminology

This article discusses the reproductive control of women who are incarcerated in the United States and United Kingdom. There are two definitions that are central to the premise of this article: "incarceration" and "women".

---

9. *Id.*

10. ALANA VAN GUNDY & SHAUNTEY JAMES, THE HISTORY, EVOLUTION, AND CURRENT STATE OF FEMALE OFFENDERS: RECOMMENDATIONS FOR ADVANCING THE FIELD, 56 (2022).

11. *Id.*

12. *Id.*

13. Nicole Hahn Rafter, *Prisons for Women, 1790-1980, 5 CRIME & JUST. 129, 138 (1983).*

14. From the architecture of prisons, to security procedures such as strip searches, to facilities for healthcare, family contact, work, and training, prisons in the Western world have been designed with men in mind. *See* GUNDY & JAMES, *supra* note 10, at 58; Emilio C. Viano, *Women in Prison in the USA, in* WOMEN IN PRISON: THE BANGKOK RULES AND BEYOND 817, 838 (Piet Hein van Kempen & Maartje Krabbe eds., 2017); U.N. Off. High Comm'r for Hum. Rts., *Women and Detention* (Sept. 2014), perma.cc/9S9J-3W2T.

15. GUNDY & JAMES, *supra* note 10, at 56.

The term "incarceration" is used to refer to all carceral institutions that detain and imprison women as a result of criminal offending in the United States and United Kingdom.[16] This includes government-operated prisons as well as those owned and operated by private companies. In the United States, there are two further distinctions to be made. Incarcerated women can be held in federal or state carceral facilities. These facilities include "prisons," which can be under the jurisdiction of the state or federal government and where convicted persons serve longer sentences, as well as "jails," which are short-term holding facilities for those awaiting trial or sentencing, or for people sentenced to a term of imprisonment that is twelve months or less.[17] Jails are usually local facilities under the jurisdiction of a city, local district, or county.[18] The terms "jails" and "prisons" will be used to discuss American facilities, but the term "prison" is also used more broadly in this article to encompass all facilities that incarcerate women in both the United States and United Kingdom.

In discussing "women" who are incarcerated, this article refers to all persons housed within women-specific prisons.[19] This includes trans women, trans men, non-binary individuals and persons assigned female at birth who are housed in a women's prison, whether they have chosen to be in a women's specific prison or not. Modern prison systems in the Western World tend to operate on a strict sex segregation basis, typically based on external genitalia, that has divided incarcerated people into male and female prison estates.[20] In 2011, the United Kingdom softened their policies to enable incarcerated people to move to a different prison that best aligns with their gender expression.[21] The United Kingdom's policy only applies to trans prisoners, and so non-binary people continue to be housed in accordance with their sex assigned at birth.[22] The Biden administration recently reinstated guidelines for transgender people in American federal prisons that allow people to be housed in accordance with their gender identity "on a case-by-case basis."[23] In respect of state prisons in the United States, an increasing number of states and localities have created policies that classify people by gender identity rather than their sex assigned at birth, including Cook County (Illinois), Cumberland (Maine), Denver (Colorado), Washington DC, as well as state prisons in California.[24]

16. It does not include detention facilities used for the purposes of immigration or mental health.

17. *Correctional Institutions, FED. BUREAU JUST. STAT.,* perma.cc/5W47-M85S.

18. *Id.*

19. This article considers the adult women prison population, it does not consider girls or young people.

20. SHON FAYE, THE TRANSGENDER ISSUE: AN ARGUMENT FOR JUSTICE 178 (2021).

21. *Id.*

22. *Id.* at 179.

23. MICHAEL CARVAJAL, FEDERAL BUREAU OF PRISONS, TRANSGENDER OFFENDER MANUAL, PROGRAM STATEMENT 5200.08 5–6 (2022), perma.cc/HKZ7-G7RF.

24. *FAQ: Answers to Common Questions about Mistreatment of TGNC Incarcerated People*, LAMDA LEGAL, perma.cc/RUP5-MGL2; Adam Beam, *California will house transgender inmates by gender identity*, AP NEWS (Sept. 26, 2020), perma.cc/EU23-6VLA.

This article does not examine the specific reproductive needs of LGBTQ+ people in prison who are housed in male and female prison estates. It is felt that the topic deserves its own separate, detailed consideration. However, in discussing "incarcerated women," this article defines that term to include all individuals housed within women-specific prisons.

2. Women Incarcerated in the United States

As of 2023, an estimated 1.775 million adults were incarcerated in the United States' correctional system.[25] Over 162,400 of those are women,[26] who are housed in 130 state and federal prison and jail facilities in the United States.[27] The population of incarcerated women is over six times higher than it was in 1980.[28] These significant increases are said to be the result of more expansive law enforcement efforts, harsher drug sentencing laws, inability to pay cash bail, and post-conviction barriers to re-entry that uniquely affects women.[29]

Racial discrimination within the carceral system, or the "New Jim Crow," is evident in the makeup of women who are incarcerated.[30] In the United States one in eighteen Black women will be incarcerated during her lifetime.[31] In 2021, the rate of imprisonment for Black women was 1.6 times the rate of imprisonment for white women, and for Latina women it was 1.3 times.[32] As Loretta Ross and Rickie Solinger acknowledge, the "most drastic result" of racialized incarceration policies in the United States is that one in fourteen African American children has at least one parent behind bars.[33]

In terms of the types of offenses that women in prison are committing, in federal prisons women are incarcerated predominantly for drug offenses (sixty-four

---

25. E. ANN CARSON & RICH KLUCKOW, BUREAU OF JUSTICE STATISTICS, NCJ 305542, CORRECTIONAL POPULATIONS IN THE UNITED STATES, 2021 - STATISTICAL TABLES 4 (2023), https://perma.cc/QU2Y-442B.

26. *Id.* at 8.

27. ASIA JOHNSON, FIGHTING FOR DIGNITY: INCARCERATED WOMEN SPEAK, 4 (2022), perma.cc/A9CA-XCYN.

28. Nikki Monazzam & Kristen M. Budd, *Incarcerated Women and Girls*, SENTENCING PROJECT (Apr. 3, 2023), perma.cc/6ZXV-AW74.

29. *Id.*; Roth, *supra* note 1, at 288–89. In particular, when women who have been imprisoned are released they face a range of post-conviction barriers such as economic security and unemployment (made worse if they are a primary or sole caregiver and because of the gendered stigma towards women who have offended), trauma from physical and/or sexual abuse suffered within prison, and ongoing substance use or mental health problems that are not addressed through individualized or gender-specific treatment while they were incarcerated. The gendered stigma that women face as offenders or alleged offenders is discussed further in Section II(B).

30. *See also* MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 2 (2010). While Alexander did not explicitly consider gender in this text, her conclusion appears to hold true in respect of women who are incarcerated: "Rather than rely on race, we use our criminal justice system to label people of color 'criminals' and then engage in all the practices we supposedly left behind" with Jim Crow.

31. Michele Goodwin, *Creating Criminals: Race, Stereotypes, and Collateral Damage, in* POLICING THE WOMB: INVISIBLE WOMEN AND THE CRIMINALIZATION OF MOTHERHOOD 114, 117 (2020).

32. Monazzam & Budd, *supra* note 28.

33. ROSS & SOLINGER, *supra* note 3, at 225.

percent), public order offenses (twenty-one percent) and property offenses (nine percent).[34] Forty-five percent of sentenced women are in state prisons for violent offenses, while only ten percent are there for public order offenses.[35] Incarcerated women currently sentenced in state prisons are more likely than their male counterparts to be incarcerated for drug offenses (almost twenty-five percent of incarcerated women, compared to eleven percent of incarcerated men) or property offenses (eighteen percent of women, compared to twelve percent of men).[36] The correlation between incarcerated women and drug offenses is discussed further below in respect of the impact it has on the reproductive needs of women in prison.[37]

The vast majority of the American female prison population have been victims of violence prior to their incarceration, and they are three to four times more likely than their male counterparts to have experienced such violence.[38] As Asia Johnson has observed, the experience of trauma is relatively universal amongst incarcerated women in the United States.[39]

Of pertinence to this article, almost sixty percent of all women in American prisons and eighty percent of women in jail are mothers.[40] Most of these mothers are the primary caretakers of their children.[41] These numbers do not include women who are pregnant while incarcerated.[42] Until 2019 there were no national statistics about pregnancy outcomes in carceral facilities.[43] In 2020, a total of ninety-one pregnant women were held in federal prisons.[44] Fifty of these pregnancies resulted in live births while the women were incarcerated.[45] There was one maternal death and one stillbirth.[46] Thirty-nine of these pregnant women were released before they gave birth.[47] While such data is now captured at the federal level,[48] only estimates are available for state prisons. The Prison Policy Initiative estimates that approximately 58,000 people per year are pregnant when

34. E. ANN. CARSON, BUREAU OF JUSTICE STATISTICS, NCJ 307149, PRISONERS IN 2022-STATISTICAL TABLES 33 (2023), https://perma.cc/WE2H-V24D.

35. *Id.* at 29.

36. Monazzam & Budd, *supra* note 28.

37. *See* discussion *infra* Section III.

38. *Women in Prison: An Overview*, ACLU, https://perma.cc/GM2M-BKP9; JOHNSON, *supra* note 27, at 1.

39. Johnson, *supra* note 27, at 1.

40. Wendy Sawyer & Wanda Bertram, *Prisons and Jails Will Separate Millions of Mothers from Their Children in 2022*, THE PRISON POLICY INITIATIVE (May 4, 2022), https://perma.cc/6P79-WVHR.

41. *Id.*

42. *Id.*

43. Crystal M. Hayes, Carolyn Sufrin, & Jamila B. Perritt, *Reproductive Justice Disrupted: Mass Incarceration as a Driver of Reproductive Oppression*, 110 AM. J. OF PUB. HEALTH S21, S22 (2020).

44. E. ANN CARSON, FEDERAL PRISONER STATISTICS COLLECTED UNDER THE FIRST STEP ACT, 6 (2021).

45. *Id.*

46. *Id.*

47. *Id.*

48. 18 U.S.C. § 3624(b).

they enter prisons or jails, or about four percent of the total number of women in state and federal prisons and three percent of those in local jails.[49]

The picture painted above demonstrates that the female prison population continues to rapidly increase in the United States. The women who are incarcerated are, generally, among the most vulnerable members of society: women of color, who have traumatic histories of abuse, are in prison in relation to a violent offense, drug offense or property crime, and are most likely mothers or pregnant.

3. Women Incarcerated in the United Kingdom

Women incarcerated in the United Kingdom includes women in facilities in England, Northern Ireland and Scotland. There are twelve women's prisons in England, one in Scotland and one in Northern Ireland.[50] There are currently no women's prisons in Wales, as Welsh women who are incarcerated are sent to prisons in England. Because of the availability of research on this topic, this article predominantly considers women held in English prisons.

In 2022, there were 3,573 women held in United Kingdom prisons (five out of every 100,000 women).[51] This is obviously a much smaller total number than those women incarcerated in the United States (nine out of every 10,000 women).[52] However, as with the United States, the female prison population continues to increase. The number of women serving an indeterminate life sentence in prison has rapidly grown in the last thirty years, from ninety-six women in 1991 to 328 women in 2021, largely considered to be the result of increasing sentence lengths.[53]

In relation to the identities of people in prison, figures are available for the number of trans people in prison, who make up only 0.2 percent of the total prison population in the United Kingdom.[54] The majority of trans women who are incarcerated are held in men's prisons in the United Kingdom.[55] Only eleven trans women are held in women's prisons in England and seven in Scotland.[56] Records are only available about the racial identity of women held in English prisons, where eighty-three percent identify as White and sixteen percent as Black, Asian

---

49. Sawyer & Bertram, *supra* note 40.

50. *Key Facts*, WOMEN IN PRISON, https://perma.cc/NSJ8-DAPH. In Scotland, some women are also held at three other men's prisons: HMP Edinburgh, HMP Greenock and HMP Grampian.

51. HOUSE OF COMMONS, JUSTICE COMMITTEE, WOMEN IN PRISON: FIRST REPORT OF THE SESSION 2022-23 9 (July 26, 2022); *SPS Prison Population*, SCOTTISH PRISON SERVICE, https://perma.cc/KX5B-UGKF; NORTHERN IRELAND STATISTICS AND RESEARCH AGENCY, THE NORTHER IRELAND PRISON POPULATION 2021/22 1 (2022).

52. Monazzam & Budd, *supra* note 28.

53. CLAUDIA VINCE & EMILY EVISON, INVISIBLE WOMEN: UNDERSTANDING WOMEN'S EXPERIENCES OF LONG-TERM IMPRISONMENT 1–2 (2021).

54. FAYE, *supra* note 20, at 177. As Faye recognizes, the actual number of trans people in prison is likely to be higher, both because this number excludes prisoners who have changed their legal gender and birth certificate, and because it relies on the prisoner having presented themselves to prison authorities as trans—something which tends to be done only by those serving long sentences.

55. *Id.* at 179.

56. *Id.*

or from another ethnic group.[57] Nine percent of women in prison are foreign nationals.[58]

In terms of the types of offenses committed by women incarcerated in the United Kingdom, women were most commonly convicted of fraud offenses (thirty-three percent) and theft offenses (twenty-one percent).[59] Women are also more likely to be sentenced to custody for non-violent, less serious offenses than their male counterparts and are often sentenced to short sentences of imprisonment (less than twelve months).[60]

As with incarcerated women in the United States, women in United Kingdom prisons present with complex trauma needs, histories of abuse, and mental health issues.[61] More than half of women in prison say they have experienced emotional, physical or sexual abuse and almost sixty percent reported being victims of domestic violence.[62] Almost a third of women in prison spent time in state or foster care as children.[63]

Statistics on the parental status of women are not available for the United Kingdom, but it is understood that incarcerated women are more likely to be primary carers for children than their male counterparts.[64] Estimates are that over half of all women in custody have dependent children.[65] It is also estimated that 17,000 children in the United Kingdom are affected by maternal imprisonment every year.[66] It continues to be a concern that the British Government does not collect such data. As the House of Commons has recognized, without this data "it is not possible to assess the specific needs of mothers in prison, or how well these needs are being met."[67]

Until recently, prison estates in the United Kingdom did not gather or publish official figures on the number of pregnant women in prison. Some figures now capture the number of women and babies received into Mother and Baby Units in prison, which are specialized units within women's prisons in the United Kingdom where mothers can remain with their baby for the first eighteen months if an admissions board determines that it is in the best interests of the child.[68] Available figures indicate that eighty-eight women made applications to enter a specialized Unit in the year to March 2022, but only thirty-nine women and forty

57. *Offender Management Statistics Quarterly: January to March 2022 (table 1.9)*, MINISTRY OF JUSTICE (July 28, 2022), https://perma.cc/LNP7-SNAQ.

58. *Id.*

59. HOUSE OF COMMONS, *supra* note 51, at 8.

60. *Id.* at 9.

61. *Id.* at 10–11.

62. LORD FARMER, THE IMPORTANCE OF STRENGTHENING FEMALE OFFENDERS' FAMILY AND OTHER RELATIONSHIPS TO PREVENT REOFFENDING AND REDUCE INTERGENERATIONAL CRIME 22 (June 2019).

63. *Id.*

64. *See id.* at 23.

65. *Id.* at 5.

66. HOUSE OF COMMONS, *supra* note 51, at 11.

67. *Id.* at 59.

68. *Prison life: Pregnancy and childcare in prison*, GOV.UK, https://perma.cc/8SXG-8E34.

babies were admitted into such Units.[69] This data does not, however, capture the pregnant women and babies who are not received into a Mother and Baby Unit. Further, not every woman chooses to have a pregnancy test on arrival to prison and some women may serve a short sentence without their pregnancy being recorded. There are some estimates that there are approximately 600 pregnancies and 100 births by women in custody in the United Kingdom each year.[70]

While the overall population of incarcerated women is lower in the United Kingdom, they share many similarities with their counterparts across the Atlantic: they have high trauma needs, are likely to have committed a property offense, are likely to be mothers of dependent children, and may well be pregnant.

B. CONDEMNED AS "UNFIT" WOMEN

Incarcerated women are often invisible in conversations about reproductive rights and justice. Some consider incarcerated women to be "unfit" by definition—unfit to be pregnant, unfit to mother, and unfit to make decisions about their own reproductive lives.

In the United States, Murray and Luker observe that incarcerated individuals "are vulnerable both to coercion and to policies and practices by prison officials and staff that are grounded in stereotypes of who 'should' reproduce that trace back through the United States' eugenic past."[71] Questions about who should, and who should not, reproduce are rooted in challenges regarding one's "fitness" to parent.[72] As Ross and Solinger argue, this results in society questioning "which persons, which women do politicians and ordinary people define as fit to be mothers?"[73] This question has seen women in various groups, including incarcerated women, defined as "bad mothers" and considered unfit to be pregnant and procreate.[74] In the United States' context this has led to policies such as the forced sterilization of women who are incarcerated – their very decision to procreate is taken away from them.

Women in prison are also often considered "unfit" to be mothers in the eyes of public policy and public discourse.[75] This is evident in the United States. Public

---

69. *HMPPS Offender Equalities Annual Report 2021/22: Table 3.1: Mother and Baby Units (MBU) Management Information, 12-months ending March 2011 to 12-months ending March 2022*, GOV.UK (Nov. 24, 2022).

70. ABBOTT, SCOTT, THOMAS, & WESTON, *supra* note 2, at 660–61; Vicki Dabrowski & Emma Milne, *Reproductive Rights on the Inside: A Rapid Evidence Assessment of Women's Experiences of Reproductive Healthcare and Rights while in Prison in England and Wales*, 23 CRIMINOLOGY & CRIM. JUST. 675, 682 (2023).

71. MELISSA MURRAY & KRISTIN LUKER, CASES ON REPRODUCTIVE RIGHTS AND JUSTICE 903 (2015). For a further discussion of the relationship between eugenics and the treatment of women in prison in both countries, *see* discussion *infra* Sections III(A)(1) and (B)(1).

72. *See* ROSS & SOLINGER, *supra* note 3, at 171.

73. *Id.*

74. *See id.*; Melissa Murray*, Abortion, Sterilization, and the Universe of Reproductive Rights*, 63 WM. & MARY L. REV. 1599, 1633 (2022).

75. ROTH, *supra* note 1, at 290.

discourse, in particular, tends to be simplistic and punitive—in response to an American news story about the shackling of pregnant women in labor, a reader commented: "It's 'dehumanizing'??? WHO CARES? These women are in prison for crimes that THEY DID. Why treat them like real people?"[76] Public policies also take their toll on incarcerated mothers. Going to state or federal prison for even a short time can result in permanent termination of a woman's parental and custody rights.[77] Their very status as an incarcerated person rules them "unfit to mother."

Women in prison in the United Kingdom are also considered "unfit" to be mothers. While imprisonment in the United Kingdom does not automatically restrict or remove a parent's responsibility for their child, English courts can still issue orders to prevent contact with an incarcerated parent or to remove their right to exercise parental responsibilities if an application is made by the other parent.[78] The United Kingdom also does not even collect complete statistics on how many incarcerated women are pregnant or parent from prison. This is a neglected and invisible population not even considered worthy of policy attention. There is also research that demonstrates concerning attitudes expressed by staff in English prisons towards pregnant women. One prison staff member commented incarcerated mothers have "lost the right" to mother, while a prison governor was quoted as saying that incarcerated women who give birth while in prison and are separated from their babies "need to realize the consequences of keeping having babies."[79]

This condemnation of incarcerated women as "unfit mothers" has a profound effect on women and their families. The effects of even a short period of custody can be devastating for a woman and her child if she is the sole or main carer.[80] Children with a parent in an American prison are more likely to be arrested and imprisoned themselves later in life, as well as to face a host of other problems such as low self-esteem, poor mental and physical health, violence and substance abuse.[81] Similarly, maternal imprisonment in the United Kingdom increases the risk a child will follow their mother into the criminal justice system, that children will have to leave their family home, and that their education will be disrupted.[82] The expectations on fathers in prison are not so severe and neither are the outcomes for their children. Indeed, adult children of imprisoned mothers have been

---

76. *Id.*

77. *Id.*

78. SARAH PEPIN, ALEX BELLIS, JACQUI BEARD & TIM JARRETT, RESEARCH BRIEFING: PARENTAL RIGHTS OF PRISONERS 2 (House of Commons Library, 2017).

79. Laura Abbott, Tricia Scott & Hilary Thomas, *Compulsory Separation of Women Prisoners from their Babies following Childbirth: Uncertainty, Loss and Disenfranchised Grief*, 45 SOCIO. OF HEALTH & ILLNESS 1, 12 (2021).

80. *See also* discussion *infra* Section III(A)(4) and (B)(4) of this article.

81. ROSS & SOLINGER, *supra* note 3, at 225.

82. LORD FARMER, *supra* note 62, at 7, 23, 76.

shown to be more likely to be convicted themselves than adult children of imprisoned fathers.[83]

These stereotypes of "unfitness" also result in the perception that incarcerated women are unfit to make decisions about their own reproductive lives more generally. As will be discussed in Section III of this article, many reproductive decisions are taken away from incarcerated women because of these stereotypes. This includes the forced sterilization of women in prison as well as limited access to abortion and contraceptive healthcare.

Reproductive rights and justice movements tend to prioritize the needs of women deemed "unfit" by society, including women of color, disabled women and immigrant women. Yet, women who are incarcerated are routinely left to the margins and research about this population continues to be limited. Unlike other marginalized groups, women who offend are considered as transgressing gender expectations—the criminal woman is seen as socially "abnormal."[84] Those who are also physically incarcerated are even more so. I consider such gender and social expectations make incarcerated women more vulnerable to reproductive control and less likely to be seen as sympathetic. Yet, I argue, these expectations make it all the more important that we advocate on behalf of incarcerated women.

C. MOVING TOWARDS A FRAMEWORK OF REPRODUCTIVE JUSTICE

In this article, I adopt a reproductive justice lens to the issue of reproductive control of incarcerated women. I do so because one of the basic claims of this movement is that "safe and dignified fertility management, childbirth, and parenting together constitute a fundamental human *right*."[85] I consider that all women, including our most vulnerable women, should be able to access these rights. Given what we know about the impact of maternal imprisonment on children in both the United States and United Kingdom, we should encourage the ability of incarcerated women to parent and maintain ties with their children. At the very least, it could stem the tide of intergenerational incarceration. More broadly, ensuring that incarcerated women can access safe and accessible reproductive healthcare is vital to preserving their dignity, wellbeing, and ability to reintegrate back into society.

So, how can we begin to analyze the imprisonment of women through the lens of reproductive justice to treat our women with dignity? Founded in 1994, the reproductive justice movement, at its heart, claims "all fertile persons and persons who reproduce and become parents require a safe and dignified context for these most fundamental human experiences."[86] There are three primary principles of the movement: (1) the right not to have a child; (2) the right to have a child; and

83. *Id.* at 7.
84. CAROL SMART, WOMEN, CRIME AND CRIMINOLOGY: A FEMINIST CRITIQUE 33 (1976).
85. ROSS & SOLINGER, *supra* note 3, at 10.
86. *Id.* at 9.

(3) the right to parent children in safe and healthy environments.[87] In addition, reproductive justice demands sexual autonomy and gender freedom for every human being.[88] By infusing reproductive rights with a social justice orientation, reproductive justice goes beyond abstract rights and individual privacy, emphasizing women's ability to truly exercise their rights.

In the context of incarceration, a reproductive justice framework "also emphasizes women's agency to make decisions while at the same time recognizing that individual women live their lives as members of communities that have distinct histories of oppression."[89] As Rachel Roth articulates, analyzing imprisonment through the lens of reproductive justice "has the potential to alter the way people think about prisons and enlarge the circle of those who care about what goes on inside prisons."[90] By acknowledging the conditions experienced inside prison and advocating for some of our most vulnerable women in society, I consider we can provide incarcerated women with the best chance of success.

II. THE REALITY OF REPRODUCTIVE CONTROL BEHIND BARS

This section will examine various reproductive issues faced by incarcerated women in the United States and United Kingdom. There are numerous reproductive issues incarcerated women encounter. In this article I examine the following: forced sterilization of women, lack of access to prenatal and postnatal care for pregnant women, shackling of women during labor, difficulties faced by mothers trying to maintain ties with their children, as well as access to contraception and abortion services. In discussing these issues, I also note that children's rights advocates argue against children being put in prison with their mother because of the harm it causes to children.[91] However, these concerns are not the focus of the article. I examine the reproductive lives of incarcerated women from their perspective.

A. UNITED STATES

1. Forced Sterilization

There is a long history of forced sterilization in the United States under the guise of "eugenics," which has targeted incarcerated women as well as poor women, African American women, disabled women, and immigrant women.[92]

---

87. *Id.*
88. *Id.*
89. ROTH, *supra* note 1, at 286–87.
90. *Id.* at 299.
91. *See, e.g.*, James G. Dwyer, *Jailing Black Babies*, 2014 Utah L. Rev. 465 (2014); GUNDY & JAMES, *supra* note 10, at 64.
92. *See, e.g.*, AZHAR GULAID & EVELYN F. MCCOY, REPRODUCTIVE HEALTH CARE IN CARCERAL FACILITIES: IDENTIFYING WHAT WE KNOW AND OPPORTUNITIES FOR FURTHER RESEARCH, 7-8 (Urb. Inst.: Just. Pol'y Ctr. 2022); REBECCA M. KLUCHIN, FIT TO BE TIED: STERILIZATION AND REPRODUCTIVE RIGHTS IN AMERICA *1950–1980*, 73–113 (2011).

Notably, the forced sterilization of women in Californian prisons has been well-documented.[93] In 2013, the Center for Investigative Reporting found that physicians under contract with the California Department of Corrections and Rehabilitation sterilized nearly 150 female inmates from 2006 to 2010 without required state approvals for the tubal ligations the women received.[94] The reporting also pointed to more than 100 additional procedures that dated back to the late 1990s.[95] Prison staff targeted women they believed were likely to return to prison and who would be a "burden" on the state.[96] Some protections have subsequently emerged. The forced sterilization of incarcerated women for the purposes of birth control was criminalized in California in 2014.[97] Federal laws also now regulate the use of sterilization procedures on institutionalized individuals and ban the use of federal funds for forced inmate sterilizations.[98]

Yet, concerning practices continue, including using forced sterilization as a *quid pro quo* for incarcerated women. Some prosecutors in Nashville have, on occasion, made the acceptance of sterilization an element of plea bargaining for female defendants in drug cases, targeting women they judge as illegitimate reproducers,[99] even though such punishments arguably violate the Supreme Court decision in *Skinner v. Oklahoma*.[100] Other investigators have identified cases in West Virginia and Virginia in which, if a woman accepted sterilization, she was granted reduced prison time.[101] As recently as 2017, the Tennessee Board of Judicial Conduct reprimanded Judge Sam Benningfield of White County, Tennessee, for promising 30-day sentence reductions to incarcerated men and women who agreed to receive vasectomies or birth-control implants.[102]

More recently, recognizing the potential for coercion in prison environments, the American College of Obstetricians and Gynecologists advised that incarcerated

---

93. BELLY OF THE BEAST (ITVS AND IDLE WILD FILMS 2020); Corey G. Johnson, *Female inmates sterilized in California prisons without approval*, REVEAL (July 7, 2013), https://perma.cc/3YF8-CK5T.

94. Johnson, *supra* note 93.

95. *Id.*

96. BELLY OF THE BEAST, *supra* note 93; Johnson, *supra* note 93.

97. BELLY OF THE BEAST, *supra* note 93.

98. 42 C.F.R. §§ 50.201–50.210 (2003). This of course only applies to federally funded institutions and healthcare, and not privately operated prisons.

99. ROSS & SOLINGER, *supra* note 3, at 216–17.

100. Skinner v. State of Okla. ex rel. Williamson, 316 U.S. 535 (1942). In *Skinner*, the Oklahoma Statute in question provided for the sterilization of "habitual criminals", namely, any person who had been convicted two or more times, in Oklahoma or in any other State, of "felonies involving moral turpitude". In determining a challenge to the Statute, the Supreme Court held that the Statute violated the petitioner's right to equal protection under the Fourteenth Amendment and the State could not sterilize offenders on the basis of the type of crimes they had committed. As applied to the cases in Nashville, the prosecutors in question appear to draw a distinction between female and male defendants convicted of specific offenses (drug offenses), whereby women are subject to sterilization practices upon pleading guilty. This distinction arguably violates the Court's ruling in *Skinner*.

101. ROSS & SOLINGER, *supra* note 3, at 217.

102. Elise B. Adams, *Voluntary Sterilization of Inmates for Reduced Prison Sentences*, 26 DUKE J. OF GENDER L. & POL'Y, 23–26 (2018).

women should not undergo tubal sterilization while in custody.[103] Despite such advice and federal regulation, it appears forced sterilization continues in women's prisons. Unless these conditions receive significant media attention, they largely remain unreported and undocumented.[104]

2. Pre and Postnatal Care for Pregnant Women

Available evidence demonstrates that many jails and prisons provide substandard, minimal, or even dangerous prenatal care for incarcerated women.[105] Most states do not require prisons to provide nutritional counseling or appropriate nutrition for pregnant women, screening, or treatment for women with high-risk pregnancies, or HIV testing.[106] While virtually every state prison system has an official policy to provide prenatal care to pregnant women, jails are less likely to have such policies.[107] In New York, for example, forty-three percent of county jails have no policy on prenatal care, and women nationwide report being less likely to receive obstetric exams or pregnancy diets in jail than in prison.[108] Some of the most serious prenatal problems faced by pregnant women are the refusal by prison staff to take bleeding seriously (a problem associated with miscarriage and stillbirth), the failure by staff to recognize women are in labor, and women giving birth inside their cells.[109] Often, prison staff do not have the skills or medical training to make judgment calls about labor or complicated medical issues, leaving women without appropriate care.

Two examples demonstrate the realities experienced by pregnant women.[110] One woman, six-and-a-half months pregnant, was locked up, bleeding, overnight in the cell of a small Minnesota jail because she could not make bail and the jail did not want to pay to take her to the hospital. Another woman, four or five months pregnant, was locked in an "observation cell" in an Arkansas jail for three days, after she had already been bleeding for three days in a group cell. Both women lost their pregnancies. Given the failures to meet nationally recognized standards for reproductive prenatal care, it is not surprising that children born to incarcerated women face poor health outcomes.[111]

---

103. Am. Coll. Obstetricians & Gynecologists, *Committee on Ethics. Committee opinion no. 695: Sterilization of Women: Ethical Issues and Considerations*, 129(4) OBSTET. GYNECOL. 775–76 (2017), https://perma.cc/Z92C-F3KZ.

104. Adams, *supra* note 102, at 31.

105. Hayes, Sufrin, & Perritt, *supra* note 43, at S22; GULAID & MCCOY, *supra* note 92, at 8.

106. ROSS & SOLINGER, *supra* note 3, at 105.

107. ROTH, *supra* note 1, at 294–95.

108. *Id.*

109. *Id.* at 295–96.

110. *Id.*

111. In the United States context, experts note that typically African American children who have a parent in prison suffer from low self-esteem, poor mental and physical health, and other problems, some of which are classified as epigenetic— that is, the manifestation of alterations in gene expression that can persist and be transmitted across generations and can contribute to an expanding progression of problem behaviors, including increased levels of family disintegration, violence, substance abuse,

Incarcerated pregnant women may also face unique prenatal needs if they have substance abuse disorders. Studies show substance use is common among incarcerated women, and in one such study twenty-six percent of pregnant people admitted to state prisons and fourteen percent to jails had an opioid use disorder.[112] Pregnant women with opioid use disorders need unique prenatal care – long established medical advice is to avoid withdrawal during pregnancy because of medical risks to themselves and their fetus, and instead offer medication to treat their disorder.[113] However, with a lack of mandatory standards or oversight for providing healthcare in United States' prisons, research by Sufrin and others demonstrates pregnant women with opioid disorders are often not able to access the medical treatment they need.[114] This is further compounded by the fact that twenty-four states have laws criminalizing the use of drugs while pregnant and that jails are not required to ask about pregnancy or substance use upon admission – there will be many pregnant people who do not even disclose their pregnancy and substance use and will not seek specialized prenatal treatment.[115]

Prisons in the United States also regularly fail to provide postpartum care, counseling, or any physical comfort to mothers who have recently given birth.[116] Some incarcerated women report receiving less than twenty-four hours of hospital care before being returned to prison, while other women report going without regular checkups post-birth or the necessary care to heal from a cesarean delivery.[117] One woman, after giving birth in a Denver Hospital, was returned to jail where she was subjected to a routine strip-search, "ordered to bend over, expose herself, and cough repeatedly" despite having just given birth and having stitches.[118] After telling staff that it hurt, "they said they didn't care" and told her

obesity, stress, and mental health issues. Other studies have directly linked paternal incarceration to adverse health outcomes for children generally, such as low birth weight (which is known to have adverse effects later in life) and a lack of continuity in medical care for children. *See generally* ROSS & SOLINGER, *supra* note 3, at 105, 225; Andrea Knittel & Carolyn Sufrin, *Maternal Health Equity and Justice for Pregnant Women Who Experience Incarceration*, 3 JAMA NETWORK OPEN (2020), https://perma.cc/X9HG-LFFW; Leah Wang, *Unsupportive Environments and Limited Policies: Pregnancy, Postpartum, and Birth during Incarceration* PRISON POL'Y INITIATIVE (Aug. 19, 2021), https://perma.cc/F6WJ-V3DZ.

112. Carolyn Sufrin, Lauren Suthernland, Lauren Beal, Mishka Terplan, Carl Latkin & Jennifer Clarke, *Opioid Use Disorder Incidence and Treatment Among Incarcerated Pregnant People in the U.S.: Results from a National Surveillance Study*, 115 ADDICTION 2057 (2020); Chris Ahlbach, Carolyn Sufrin & Rebecca Shlafer, *Care for Incarcerated Pregnant People With Opioid Use Disorder: Equity and Justice Implications*, 136 OBSTET. GYNECOL. 576 (2020).

113. Sufrin, Sutherland, Beal, Terplan, Latkin & Clarke, supra note 112, at 2058.

114. *Id.*

115. Susan J. Rose, *Incarcerated pregnant women and substance use: a conversation with Thomas P. LeBel, PhD*, 22 J. SOC. WORK PRAC. IN THE ADDICTIONS 247, 248 (2022). *See generally* DOROTHY ROBERTS, KILLING THE BLACK BODY: RACE REPRODUCTION AND THE MEANING OF LIBERTY 159–210 (2d ed. 2017) (discussing the criminalization of pregnant women for drug use).

116. ROTH, *supra* note 1, at 295, 298.

117. *Id.* at 298.

118. *Id.*

"to cough harder."[119] Treatment such as this not only demonstrates the neglect of pregnant women in prison, but also the dehumanizing approach regularly taken towards incarcerated women.

3. Shackling of Women During Labor

American prisons continue to pursue policies that "actively degrade" pregnant women, such as using restraints to shackle women giving birth.[120] Restraints can be used to transport a pregnant woman to the hospital, used during labor, and may even be used to chain a woman to a hospital bed while giving birth.[121] Cassandra Brawley had a baby while incarcerated in Washington state and was restrained throughout her journey to the hospital and to the bed at the hospital.[122] Her restraints were only removed during her cesarean surgery.[123] Afterwards, she said, "I am still a person and I didn't feel like I should be treated like a caged animal."[124]

While federal prisons ended the shackling of pregnant women in 2008, many state prisons continue to shackle women during pregnancy and birthing.[125] As of December 2019, only twenty-nine states and the District of Columbia had laws in place banning the use of shackling in prison.[126] Even in states with anti-shackling laws in place the practice still routinely happens, including in New York, California and Illinois.[127] This is reportedly because of a lack of oversight and accountability of custody officers, lack of awareness of the laws, and punitive attitudes towards pregnant incarcerated people.[128]

The use of restraints is concerning and medically dangerous. Restraints make it difficult for doctors to assess the condition of the mother and the fetus and to know if emergency intervention is necessary.[129] Evidence also shows that restraining a person during labor and delivery can lead to injuries for the parent and infant.[130] Yet, despite knowledge of the potential consequences, these practices continue.

---

119. *Id.*

120. ROSS & SOLINGER, *supra* note 3, at 105. *See also* Leonie Stoute, *Break Every Chain: Bringing an End to the Unconstitutional Shackling of Pregnant Inmates*, 60 HOW. L. J. 749, 750-52 (2017); Chris DiNardo, *Pregnancy in Confinement, Anti-Shackling Laws and the "Extraordinary Circumstances" Loophole*, 25 DUKE J. GENDER L. & POL'Y 271, 274-75 (2018).

121. ROTH, *supra* note 1, at 297.

122. *Id.*

123. *Id.*

124. *Id.*

125. ROSS & SOLINGER, *supra* note 3, at 105; Stoute, *supra* note 120, 761–69.

126. Hayes, Sufrin, & Perritt, *supra* note 43, at S23; *see also* First Step Act, *supra* note 48 (Federal prisons); S. Y. Thomas & J. L. Lanterman, *A National Analysis of Shackling Laws and Policies as They Relate to Pregnant Incarcerated Women*, 14 FEMINIST CRIM. 263, 263–84 (2019).

127. Stoute, *supra* note 120, at 766–69.

128. Hayes, Sufrin, & Perritt, *supra* note 43, at S23.

129. ROSS & SOLINGER, *supra* note 3, at 105.

130. GULAID & MCCOY, *supra* note 92, at 10; Camille Kramer, Karenna Thomas, Ankita Patil, Crystal M. Hayes, & Carolyn B. Sufrin, *Shackling and pregnancy care policies in US prisons and jails*, 27 MATERNAL AND CHILD HEALTH J. 186, 187 (2022).

4. Difficulties for Mothers to Maintain Ties With Children

As Ross and Solinger observe, the policies and practices adopted by prisons throughout the United States reflect the willingness of prison authorities "to rupture and even sever the relationships between these mothers and their children."[131] Several issues face incarcerated mothers hoping to maintain ties with their children. The isolated locations of women's prisons, often hundreds of miles from their homes, make it difficult for families to travel for visits, as do burdensome prison visiting policies.[132] Mothers frequently bring children to visit their incarcerated fathers, yet children are less likely to visit their incarcerated mothers because of financial barriers preventing travel or because caregivers are unable or unwilling to bring children for visits.[133] Incarcerated women who have recently given birth are faced with a lack of nursery programs in most state prisons, as well as a lack of other programs that promote parent-child bonds.[134] Mothers are commonly separated from their newborn children within less than twenty-four hours of birth, disrupting important bonding time and breastfeeding benefits.[135] Only eight prisons in the United States (6.7 percent of all women's prisons) have residential or nursery programs where eligible incarcerated mothers can live with their newborn babies.[136]

Incarcerated mothers may also face termination of their parental rights.[137] Many states permit the termination of parental rights if the parent has not been present in the child's life for two years, and the federal Adoption and Safe Families Act of 1997 allows termination after a child has been in foster care for at least fifteen of the past twenty-two months. [138] Many women also leave prison without stable housing or employment, leaving them without the financial resources to fight for reunification with their children."[139] A woman with a criminal record is also banned from accessing welfare, public housing, student loans, and other social services, all of which are important resources for a woman to reestablish her life with her children.[140] By temporarily, and even permanently, cutting off ties between incarcerated mothers and their children, we are setting these

---

131. ROSS & SOLINGER, *supra* note 3, at 106.

132. *Id.* at 105–06, 226.

133. *Id.* at 226.

134. *Id.* at 106.

135. Hayes, Sufrin, & Perritt *supra* note 43, at S23.

136. GULAID & MCCOY, *supra* note 92, at 8–9.

137. *See e.g.,* Lassiter v. Department of Social Services, 452 U.S. 18 (1981) (upholding termination of a woman's parental rights after she was convicted of second-degree murder and sentenced to a term of 25 to 40 years' imprisonment.) Ms. Lassiter's parental rights were terminated because she had "willfully failed to maintain concern or responsibility for the welfare of the minor," and because it was "in the best interests of the minor," for Ms. Lassiter's rights to be terminated. While the Supreme Court appeal was on the basis of a challenge to Ms. Lassiter's due process rights (because she was indigent, she had a right to counsel and the trial Court erred in not requiring the provision of counsel), the Court held the trial Court had not erred and her parental rights remained terminated.

138. ROSS & SOLINGER, *supra* note 3, at 227.

139. *Id.*

140. *Id.*; Hayes, Sufrin, & Perritt, *supra* note 43, at S23.

women up to fail–they will become increasingly isolated from their families and may even lose their reason to rehabilitate.

5. Access to Contraception and Abortion

The limited access to contraception and abortion in United States' prisons further impedes any sense of reproductive autonomy for incarcerated women.

Few prisons and jails provide access to contraception. Some do not even permit women to continue methods of contraception they used prior to their incarceration, including by refusing to prescribe prescriptions for contraceptives (whether administered orally, as a patch, or by injection).[141] The limited research on this issue indicates that contraception policies in prisons are varied and there is often a lack of formal written policies about providing access to contraception. Failure to provide contraception to incarcerated women, particularly for those in short stay jails with unpredictable release dates, can place them at high risk of unplanned pregnancy if they re-enter the prison system.[142] More fundamentally, it also takes away the ability of incarcerated women to access the contraceptive care they choose, or may medically require.

There are also similar issues with a lack of access to abortion services. The vast majority of American research examined in this article was written before the Supreme Court's decision in *Dobbs v. Jackson Women's Health*.[143] The conditions examined in the research are therefore largely those that existed under the frameworks of *Roe v. Wade* and *Planned Parenthood v. Casey*.[144] However, we know that under *Roe* and *Casey* access to abortion services in prisons was "highly variable."[145] If anything, the picture for many incarcerated women in the United States will only be worse now. Incarcerated women do not have the option of leaving their state to travel to another abortion-friendly state, or to try and obtain self-managed abortion pills.[146] At the state level, only California has a statute affirming the rights of women in jail and prison to access abortion care.[147] Most states assign responsibility to the Department of Corrections which then delegates responsibility to individual prisons, making decision-making processes inaccessible to the public.[148]

The limited access to contraception and abortion only serves to emphasize the neglectful and inhumane approach taken to the reproductive lives of incarcerated

141. Hayes, Sufrin, & Perritt, *supra* note 43, at S23; Aneesha Cheedalla & Carolyn B. Sufrin, *Contraception Policies in U.S. Jails, Prisons, and Juvenile Detention Systems: A National Survey*, 27 J. CORR. HEALTH CARE 226, 226 (2021).

142. Hayes, Sufrin, & Perritt, *supra* note 43, at S23.

143. Dobbs v. Jackson Women's Health Organization, 597 U.S. 1 (2022).

144. Roe v. Wade, 410 U.S. 113 (1973); Planned Parenthood v. Casey, 505 U.S. 833 (1992).

145. Joshua Sharfstein, *Jailed and Pregnant: What the Roe Repeal Means for Incarcerated People*, JOHN HOPKINS, BLOOMBERG SCHOOL OF PUBLIC HEALTH (Sept. 21, 2022), https://perma.cc/T8KS-928F.

146. Carolyn Sufrin, as quoted in Sharfstein, *supra* note 145.

147. ROTH, *supra* note 1, at 291.

148. *Id.*

women in the United States. Unfortunately, the reality in prisons across the Atlantic does not appear to be significantly better.

B. UNITED KINGDOM

As a general point of comparison, there is less research about the reproductive healthcare of incarcerated women in the United Kingdom than there is in the United States.[149] What research there is tends to focus on mothers with babies in prison.[150] Existing research does, however, indicate that incarcerated women in the United Kingdom also face difficulties accessing appropriate reproductive healthcare.[151]

1. Forced Sterilization

There is currently no research available about forced sterilization of incarcerated women in the United Kingdom. That does not necessarily mean it is not an issue for incarcerated women, but it certainly is not as prevalent as in the United States. Available general research on sterilization focuses on the forced sterilization of women with intellectual disabilities.[152] At various times in England during the twentieth century, sterilization was advocated for as an effective form of birth control for people with intellectual disabilities, although it has always been a contentious practice.[153] However, relatively little is known about contemporary sterilization practices in the United Kingdom.[154]

2. Pre and Postnatal Care for Pregnant Women

From the limited research that focuses on women's experiences of pregnancy within prisons in the United Kingdom, it is evident women receive poor pre and postnatal care. These conditions include poor nutrition, issues for pregnant women with bathing and showering, a lack of fresh air, as well as a lack of com

149. Dabrowski & Milne, *supra* note 70, at 676-678; ABBOTT, SCOTT, THOMAS, & WESTON, *supra* note 2, at 662.

150. Dabrowski & Milne, supra note 70 at 679.

151. *See, e.g.*, Dabrowski & Milne, *supra* note 70, at 677, 682–86; Abbott, Scott, Thomas, & Weston, *supra* note 2; ANNABEL KENNEDY, DENISE MARSHALL, DIANA PARKINSON, NAOMI DELAP, & LAURA ABBOTT, BIRTH COMPANIONS, BIRTH CHARTER FOR WOMEN IN PRISONS IN ENGLAND AND WALES 1, 26; CAROLINE O'KEEFE & LESLEY DIXON, ENHANCING CARE FOR CHILDBEARING WOMEN AND THEIR BABIES IN PRISON (Sheffield Hallam University, 2015); Carly Mulligan, *Staying Together: Mothers and Babies in Prison*, 27 BRITISH J. MIDWIFERY 436 (2019); BIRTH COMPANIONS, A WINDOW OF OPPORTUNITY (2021).

152. *See, e.g.*, Elizabeth Tilley, Jan Walmsley, Sarah Earle & Dorothy Atkinson, *"The Silence is Roaring": Sterilization, Reproductive Rights and Women with Intellectual Disabilities*, 27 DISABILITY & SOC'Y 413 (2013); A. J. Stansfield, A. J. Holland & I. C. H. Clare, *The Sterilization of People with Intellectual Disabilities in England and Wales During the Period 1988 to 1999*, 52 J. OF INTELL.L DISABILITY RSCH. 569 (2007).

153. Tilley, Walmsley, Earle & Atkinson, *supra* note 152, at 417–19.

154. *Id.* at 417.

fort supplies (breast pads, maternity bras, extra pillows and suitable bedding).[155] These conditions all negatively impact the health and wellbeing of pregnant women.[156]

There is also evidence of negligent medical care for pregnant women giving birth in prison. This care has come under closer scrutiny in the United Kingdom following the recent deaths of two babies in prison: Baby A at HMP Bronzefield in 2019, and Baby B at HMP Styal in 2020. Reviews conducted by the Prison and Probation Ombudsman in both cases demonstrate that both women received inadequate healthcare and maternity services and that there was insufficient oversight of the care provided in prison by community medical practitioners.[157] Recent research conducted by Rona Epstein and others also found a "disturbing and indeed distressing picture of lack of care for pregnant women in our prison system."[158]

The lack of support given to incarcerated pregnant women has also been shown to influence the choice of some women about how to deliver their babies. In some cases, women chose to have a medicalized birth (such as a planned cesarean section) over the uncertainty of the potential complications associated with spontaneous labor in prison and a lack of medical care.[159]

Evidence suggests significant numbers of incarcerated women in the United Kingdom report needing help with drug misuse upon entry to prison – some studies have indicated this affects as many as forty-nine percent of incarcerated women.[160] However, very little research is available about substance use among pregnant women in prison. English prisons tend to have policies that prevent a mother and her newborn baby from being accepted into a specialized Mother and Baby Unit in prison if they are using drugs.[161] Anecdotal evidence also suggests some pregnant women have not received specialized midwifery and prenatal care for their substance use disorders while in prison.[162]

155. RONA EPSTEIN, GERALDINE BROWN, & MARIA GARCIA DE FRUTOS, WHY ARE PREGNANT WOMEN IN PRISON? 15–20 (Coventry University 2021); Dabrowski & Milne, *supra* note 70, at 9; Abbott, Scott, Thomas, & Weston, *supra* note 2, at 664–67.

156. EPSTEIN, BROWN, & GARCIA DE FRUTOS, *supra* note 155, at 15-20; Dabrowski & Milne, *supra* note 70, at 9; Abbott, Scott, Thomas, & Weston, *supra* note 2, at 664-67.

157. SUE MCCALLISTER, INDEPENDENT INVESTIGATION INTO THE DEATH OF BABY A AT HMP BRONZENFIELD ON 27 SEPTEMBER 2019 (Prisons & Probation Ombudsman 2021); SUE MCCALLISTER, INDEPENDENT INVESTIGATION INTO THE DEATH OF BABY B AT HMP & YOI STYAL ON 18 JUNE 2020 (Prisons & Probation Ombudsman 2022).

158. EPSTEIN, BROWN, & GARCIA DE FRUTOS, *supra* note 155, at 15.

159. Abbott, Scott, Thomas, & Weston, *supra* note 2, at 667.

160. EPSTEIN, BROWN, & GARCIA DE FRUTOS, *supra* note 155, at 26. *See also* CHARLIE TAYLOR, HM CHIEF INSPECTOR OF PRISONS FOR ENGLAND AND WALES: ANNUAL REPORT 2021-22 (2022) (noting that thirty-seven percent of incarcerated women in the United Kingdom had a problem with drug misuse upon entry to prison).

161. Michael Spurr, *Women in Prison in England and Wales*, *in* WOMEN IN PRISON: THE BANGKOK RULES AND BEYOND 295, 315 (Piet Hein van Kempen & Maartje Krabbe eds., 2017).

162. EPSTIEN, BROWN, & GARCIA DE FRUTOS, *supra* note 155, at 18–20.

3. Shackling of Women During Labor

The use of restraints on incarcerated women during labor is not forbidden in the United Kingdom, although one prison governor has said it is "extremely unlikely" to occur.[163] The Prison Rules allow for the restraining of prisoners to manage risk where it is considered "essential."[164] There is evidence women have been handcuffed and placed in chains during hospital appointments and while giving birth.[165] Restraints are reportedly only applied during labor in "exceptional cases" and where a risk assessment has indicated that a woman's risk cannot be managed in another way.[166] Some incarcerated women who spoke with researchers reported being made to wear handcuffs or chains while in the maternity department in hospitals.[167] In a 2020 study conducted by Abbott and others, all of the pregnant women they spoke with described the experience of being handcuffed as "demeaning."[168]

4. Difficulties for Mothers to Maintain Ties With Children

As with their American counterparts, mothers in prisons in the United Kingdom face a range of issues including physical distance from their families, a limited number of placements in specialized Mother and Baby Units, and compulsory segregation of women from their babies following childbirth.

As with women's prisons in the United States, women in the United Kingdom are often held further away from their home than their male counterparts due to the small number of women's prisons. In the United Kingdom, women are, on average, held sixty-three miles away from their homes, with a significant number of women being held more than 100 miles from their homes.[169] The Prison Reform Trust has said "regular contact between imprisoned mothers and their children increases positive outcomes for children," yet around fifty percent of mothers do not receive visits from their children during their sentence.[170] There is some support for women to maintain family contact, such as financial assistance for travel expenses and hotels for families; however, these practices vary between prisons.[171]

In respect of new mothers in prison, there are six Mother and Baby Units within the twelve women's prisons in England, providing an overall total capacity of sixty-four places for women and seventy places for babies.[172] While placement

163. Dabrowski & Milne, *supra* note 70, at 9.
164. The Prison Rules 1999, r. 49 (U.K.); Spurr, *supra* note 161, at 322.
165. Dabrowski & Milne, *supra* note 70, at 9; Abbott, Scott, Thomas & Weston, *supra* note 2, at 667–69.
166. Spurr, *supra* note 161, at 134, 314.
167. Abbott, Scott, Thomas, & Weston, *supra* note 2, at 668.
168. *Id.*
169. HOUSE OF COMMONS, *supra* note 51, at 57.
170. *Id.*
171. *Id.* at 58.
172. *Id.* at 52; Dabrowski & Milne, *supra* note 70, at 10.

in such a Unit provides a mother the opportunity to bond with her newborn, concerns have been raised about the availability and accessibility of places in these Units. The Prisoners Advice Service recently commented that places are only available to "the very few" because of availability and eligibility issues.[173] Mothers have to apply to be admitted into a specialized Unit, and eligibility criteria include that she is not using drugs, does not present a risk to other occupants, will be able to look after her child with close supervision, and it is in the child's best interests to be in the Unit.[174] There is evidence suggesting women are unlikely to be admitted if they have a prior custodial history.[175] Maya Sikand's 2015 study across multiple prisons sites also concluded the process for applying for Unit placement is unclear and women find it obscure.[176]

Researchers have also identified concerns about compulsory separation of incarcerated women from their babies following childbirth. Separation may occur for one of several reasons: it may occur at birth, if a mother has been refused a place in a Mother and Baby Unit, or did not apply for one; if a mother is required to leave a specialized Unit due to a breach of rules; or if a baby reaches the Unit's upper age limit (eighteen months old) before their mother is released.[177] Separation is said to cause significant harm to the mother.[178] Incarcerated mothers commonly described the experience of compulsory separation from their baby as a violent act: having their newborn "ripped" from them.[179] There have also been growing reports of incarcerated mothers committing suicide after being forcibly separated from their newborn babies, as was the case for Michelle Barnes in England in 2016,[180] and for Roseanne in Northern Ireland in 2019.[181]

The fact that the United Kingdom still does not collect data on how many women in prison are mothers continues to present a significant obstacle. As the House of Commons Justice Committee recently observed, in "the absence of knowing how many families are affected by maternal incarceration it is difficult to provide adequate support for the maintenance of family ties for this group."[182]

173. HOUSE OF COMMONS, *supra* note 51, at 53.

174. Spurr, *supra* note 161, at 315.

175. Dabrowski & Milne, *supra* note 70, at 11.

176. MAYA SIKAND, LOST SPACES: IS THE CURRENT PROCEDURE FOR WOMEN PRISONERS TO GAIN A PLACE IN A PRISON MOTHER AND BABY UNIT FAIR AND ACCESSIBLE? 40 (The Griffin Society, 2015).

177. JENNY NORTH, GETTING IT RIGHT? SERVICES FOR PREGNANT WOMEN, NEW MOTHERS, AND BABIES IN PRISON 4 (The Maternity Alliance).

178. Abbott, Scott, & Thomas, *supra* note 79, at 3–4.

179. *Id.* at 8.

180. NIGEL NEWCOMEN CBE, INDEPENDENT INVESTIGATION INTO THE DEATH OF MS MICHELLE BARNES A PRISONER AT HMP LOW NEWTON ON 16 DECEMBER 2015 (Prisons & Probation Ombudsman July 2016).

181. Abbott, Scott, Thomas, & Weston, *supra* note 2, at 3.

182. HOUSE OF COMMONS, *supra* note 51, at 57.

5. Access to Contraception and Abortion

Unfortunately, little is known about the ability of incarcerated women to access contraception and abortion services in the United Kingdom.

In relation to contraception, there is a dearth of research. Limited anecdotal accounts indicate incarcerated women experience difficulties obtaining medication they felt they needed, including contraceptive medication they had regularly accessed while in the community.[183] While His Majesty's Inspectorate of Prisons reportedly aims to provide confidential access to contraception for incarcerated women,[184] we simply do not know if this is occurring.

There is very little research about experiences of abortion care in prisons in the United Kingdom. In the United Kingdom, abortion is legal under certain conditions, including if it is performed before twenty-four weeks and continuation of the pregnancy would involve risk of injury to the physical or mental health of the pregnant person.[185] Available research suggests women are not being supported to terminate their pregnancies while in prison.[186] Further, women who are confirmed to be pregnant upon arrival to prison are seemingly offered little advice about the options for the outcome of their pregnancy, with the consequence that some women detained for a short period may remain pregnant until their release and access an abortion only after release.[187] Prison officials have little information on the subject of termination. One midwife in an English prison commented that the possibility of termination is always raised by the mother and not staff, while an officer in another prison said that it was not "entirely" left to mothers to bring up the question of termination.[188] The lack of research in this area of reproductive healthcare only emphasizes a broader trend of neglect for the reproductive lives of incarcerated women in the United Kingdom.

C. HOW DO THESE REALITIES COMPARE?

A comparison of the conditions experienced by incarcerated women in the United States and United Kingdom demonstrates that it is commonplace for incarcerated women to be given poor reproductive healthcare, and even have their reproductive decisions taken away from them.

Different issues take center stage in each country. In the United States there are particular problems with a history of forced sterilization, substandard and dangerous

---

183. Emma Plugge, Nicola Douglas, & Ray Fitzpatrick, *Patients, Prisoners, or People? Women Prisoners' Experiences of Primary Care in Prison: A Qualitative Study*, BRIT. J. OF GEN. PRAC. e1, e4 (2008).

184. CHARLIE TAYLOR, EXPECTATIONS: CRITERIA FOR ASSESSING THE TREATMENT OF AND CONDITIONS FOR WOMEN IN Prison 44 (HM Inspectorate of Prisons 2021).

185. Abortion Act 1967 c. 87, §1(1)(a) (U.K.); The Abortion (Northern Ireland) (No. 2) Regulations 2020 (U.K.). In Northern Ireland abortion is also permitted up to 12 weeks for any reason. Outside of these exceptions, abortion remains a criminal offense under the Offences Against the Person Act 1861, 24 & 25 Vict. c. 100, §§ 58, 59 (U.K.).

186. Dabrowski & Milne, *supra* note 70, at 11; North, *supra* note 177, at 18.

187. Dabrowski & Milne, *supra* note 70, at 11; North, *supra* note 177, at 18.

188. NORTH, *supra* note 177, at 18.

prenatal care for pregnant women and pregnant women with substance use disorders, a lack of residential or nursery units for new mothers and their babies, termination of parental rights and significant obstacles to access contraception and abortion. The significant numbers of women imprisoned in the United States also means there are many more women who face reproductive oppression than there are in the United Kingdom (152,000 women in the United States compared to 3,573 in the United Kingdom). In the United Kingdom, one of the primary issues is a significant lack of research about the reproductive lives of incarcerated women and the healthcare they receive. This makes it difficult to accurately assess the treatment and care given to incarcerated women. What is known suggests that key issues include poor pre and postnatal care for pregnant women, continued restraint of women during labor and compulsory separation of mothers from their children where they are not placed in a Mother and Baby Unit.

What is common between the two countries is that incarcerated women continue to face reproductive control and oppression. Why is this? What are the structures and systems behind this oppression in each country? What has been done to address it? These questions are explored in the next section.

III. A COMPARATIVE ANALYSIS

This section will directly compare the models of incarceration and approaches taken in relation to the reproductive needs of incarcerated women across the Atlantic. It will identify the similarities and differences between the two countries across four subsections:

(a) the models of incarceration adopted in each country and how those models impact the reproductive care given to incarcerated women;
(b) the rights to healthcare that women in prison have and how they are (or are not) realized in practice;
(c) the influence of international norms on prison conditions and, in particular, the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules); and
(d) the different legal approaches adopted in each jurisdiction that have sought to improve the conditions experienced by incarcerated women.

The purpose of conducting this comparative analysis is to consider the factors and obstacles that prevent women from accessing better reproductive care. Broadly, the goal is to indicate common problems, suggest possible solutions and reveal trends across these Atlantic nations.

A. INCARCERATION MODELS ACROSS THE ATLANTIC

This subsection will consider the structure and models of incarceration adopted in each country and assess how that may impact the reproductive care given to women who are incarcerated. Specifically, this section will focus on the impact

of mass incarceration, the privatization of prisons and the models for regulation and oversight.

1. United States

The United States' model of incarceration is defined by two key features: the proliferation of private prisons and mass incarceration of its citizens.

The proliferation of private prisons and prison healthcare companies that profit from imprisoning people is important context for the American incarceration system.[189] Although public agencies run most prisons and jails, private, for-profit companies operate some of them, and private companies win contracts to provide medical services in many more facilities. Turning incarceration into a profit-making business has its roots in neoliberal ideology and politics that took hold in the United States towards the end of the twentieth century.[190] While there are currently no studies directly comparing reproductive care in private prisons as against state or federal run prisons, Roth has posited that the "profit motive [in private prisons] inevitably creates disincentives to providing the best care because every dollar spent on medical care lowers the company's earnings."[191] Privatization also means there is a lack of oversight mechanisms and accountability for the reproductive control of incarcerated women.[192]

The phenomenon of mass incarceration also means many more American women are subject to reproductive oppression in prison.[193] In the United States, it is a phenomenon that has led to the disproportionate imprisonment of women and people of color.[194] The United States incarcerates more women than any other country in the world – nearly a third of the world's incarcerated women are in America.[195] For women, in pure number terms, that means over 152,000 women are incarcerated and subject to worse reproductive healthcare and outcomes. Over the past 40 years, the United States has spent $1.5 trillion on this system of mass incarceration.[196] And yet, while actual crime rates for women have decreased over the last 20 years, America continues to redirect spending to support an expanding prison system.[197] Public health scholars have found "mass

189. Hayes, Sufrin, & Perritt, *supra* note 43, at S21.

190. ROSS & SOLINGER, *supra* note 3, at 100–101.

191. ROTH, *supra* note 1, at 288.

192. *Id.* at 286; ROSS & SOLINGER, *supra* note 3, at 105.

193. "Mass incarceration" refers to the "exponential, unprecedented, and disparate rise" in the number of people behind bars in the United States since the 1970s. It also refers to the "larger web of laws, rules, policies, and customs that control those labeled criminals both in and out of prison." *See also* Hayes, Sufrin, & Perritt, *supra* note 43, at S21; ALEXANDER, *supra* note 30, at 15.

194. Goodwin, *supra* note 31, at 120–21. *Compare* Michele Goodwin, *Pregnancy and the New Jane Crow*, 53 CONN. L. REV. 3, 543 (2021) (writing about the problematic ways in which women have become targets of state policing and criminalization due to the intensified scrutiny of pregnancy), *with* ALEXANDER, *supra* note 30 (writing about the disproportionate imprisonment of racial and ethnic minorities).

195. Goodwin, *supra* note 31, at 120.

196. ROSS & SOLINGER, *supra* note 3 at 216.

197. *Id.* at 216.

incarceration, by its very nature, compromises and undermines bodily autonomy and the capacity for incarcerated people to make decisions about their reproductive well-being and bodies."[198] The use of prisons as "warehouses" for entire communities considered "disposable and valueless" is reflected in the poor quality of healthcare, including reproductive healthcare, provided to incarcerated women.[199]

2. United Kingdom

In contrast to the United States' model, most prisons in the United Kingdom are controlled by the state. The National Offender Management Services (NOMS) is an executive agency of the Ministry of Justice (MOJ) that is responsible, on behalf of the Secretary of State for Justice, for commissioning and delivering prison and probation services in England. Prisons and probation services in Northern Ireland and Scotland are managed separately from NOMS, but also under a predominantly public mandate.[200] The fact that most prisons are state-operated means there are greater systems for oversight over the conditions and treatment for incarcerated women. In England this includes the role of independent organizations to inspect and monitor how domestic legislation is followed. These include His Majesty's Inspectorate of Prisons and the Independent Monitoring Board, which must be allowed access to prisoners to conduct investigations.[201]

There are still privately run prisons in the United Kingdom. In fact, fourteen of the United Kingdom's prisons, containing one fifth of the total prison population, are owned and run by private entities.[202] Two of the fourteen women's prisons are privately run: HMP/YOI Bronzefield and HMP Peterborough.[203] This poses similar problems to prison privatization in America, with the prioritization of profit over the general care of prisoners. Yet, unlike the United States where health services in prison are routinely privatized, healthcare services in United Kingdom prisons are provided through the National Health Service (NHS), a state-run agency. This will be discussed further in the next sub-section.

The United Kingdom also incarcerates fewer people and does not share the same phenomenon of mass incarceration. As aforementioned, the sheer numbers demonstrate this: the United States incarcerates 152,000 women (or 9 out of 10,000 American women), while the United Kingdom incarcerates 3,573 women (or 5 out of 100,000 women). The British Government nevertheless continues to invest heavily in prisons for women. In January 2021, the Government announced

198. Hayes, Sufrin, & Perritt, *supra* note 43, at S21; JOHNSON, *supra* note 27, at 4.
199. ROSS & SOLINGER, *supra* note 3, at 105.
200. Spurr, *supra* note 161, at 295.
201. *Id.* at 297.
202. FAYE, *supra* note 20, at 186–87.
203. Spurr, *supra* note 161, at 313.

its intention to build 500 new places in the women's prison estate, in direct opposition to its Female Offender Strategy.[204]

3. Comparative Comments

In the twenty-first century, the United States' prison industry cannot be separated from the mass incarceration phenomenon. While the United Kingdom has not embraced the same model of mass incarceration, it continues to send women to prison at significant rates and increase investment in prison infrastructure. These trends mean we are seeing more women placed in a system that is not designed for them or their reproductive needs. Reproductive outcomes are even worse when women are placed in privatized prisons, where there is even less oversight over their treatment and, in the case of the United States, the healthcare they receive.

Radical criticism of these models increasingly focuses on abolitionist goals – ending carceral responses to criminal behavior altogether.[205] In relation to reproductive oppression, this abolitionist response is strong. For example, as Epstein argues, pregnant women should *never* be placed in prison and other sentencing alternatives, such as suspending a sentence of imprisonment until after she has given birth, should be considered.[206] Courts should be willing to consider alternative community-based sentencing options more readily, including electronic monitoring,[207] community supervision, or even diversion where appropriate. These sentencing choices could prevent women from being incarcerated in the first place and being subject to poor reproductive care, whether during pregnancy or otherwise.

In many cases, prison is not an appropriate means of punishing and rehabilitating women who offend. Indeed, many incarcerated women are charged with minor and non-violent offenses and, arguably, do not need to be in prison at all.[208] Even without abolishing prisons, proper recognition of the reproductive harm caused within the system could lead to better outcomes. By recognizing the reproductive harm caused by the existing models of incarceration in both countries, we can understand the need to find alternatives to incarceration for many women caught up in the criminal justice system.

---

204. PRISON REFORM TRUST, WHY FOCUS ON REDUCING WOMEN'S IMPRISONMENT? ENGLAND AND WALES 3 (2022); MINISTRY OF JUSTICE, FEMALE OFFENDER STRATEGY ¶12, 57 (2018).

205. *See e.g.* ROTH, *supra* note 1, at 288-289; Hayes, Sufrin, & Perritt, *supra* note 43, at S24.

206. EPSTEIN, BROWN, & GARCIA DE FRUTOS, *supra* note 155, 28–41.

207. *Cf.* Michelle Alexander, *The Newest Jim Crow*, N.Y. TIMES (Nov. 8, 2018), https://perma.cc/GYD7-DK6K (discussing electronic surveillance and monitoring sentences as a new form of e-carceration).

208. UNITED NATIONS OFFICE ON DRUGS AND CRIME, COMMENTARY TO THE UNITED NATIONS RULES FOR THE TREATMENT OF WOMEN PRISONERS AND NON-CUSTODIAL MEASURES FOR WOMEN OFFENDERS (hereinafter THE BANGKOK RULES) 43 (2009).

B. A RIGHT TO HEALTHCARE IN PRISON?

So long as women continue to be incarcerated, they must not be denied access to reproductive healthcare. This subsection examines the rights to healthcare that incarcerated women have in both countries, and how those rights are failing to be realized in practice.

1. United States

People in prison are the only group in the United States with a constitutional right to medical care, as established by the Supreme Court's decision in *Estelle v. Gamble*.[209] In *Estelle* the Court observed that incarcerated individuals "must rely on prison authorities to treat his [or her] medical needs; if the authorities fail to do so, those needs will not be met."[210] The Supreme Court held "deliberate indifference to serious medical needs" constitutes the "unnecessary and wanton infliction of pain," whether by medical personnel or by corrections officers who intentionally deny or delay access to care.[211]

However, the rights espoused in *Estelle* have been continuously eroded since the landmark decision was issued. The Supreme Court has subsequently made it more difficult for people in prison to enforce their rights to medical care or seek redress for violations.[212] Subsequent decisions have emphasized that "deliberate indifference" is a high standard and difficult to prove because it turns on the subjective state of mind of the person being sued, as opposed to the objective injuries suffered by the person deprived of medical care.[213] In 1996 Congress further eroded these rights by passing the Prison Litigation Reform Act, which limits access to the courts and limits judicial monitoring of prison conditions after winning a case.[214]

Despite the declaration in *Estelle*, there are also limited mechanisms for ensuring incarcerated women can obtain their constitutional right to healthcare in prison. There is no agency that oversees health care in prisons or jails or requires these facilities to provide a certain basic set of health care services, including pregnancy care.[215] There are also no national standards to implement the constitutional right to medical care in prison.[216] Typically, each federal, state and local prison system establishes their own policies and procedures, with little oversight.[217] There are some organizations that accredit custodial healthcare programs, but a minority of institutions have gone through this process.[218] As Roth

---

209. Estelle v. Gamble, 429 U.S. 97 (1976); ROTH, *supra* note 1, at 287.
210. *Estelle*, 429 U.S. at 103.
211. *Id.* at 104-05.
212. ROTH, *supra* note 1, at 287.
213. *See e.g.*, Farmer v. Brennan, 511 U.S. 825 (1994).
214. Prison Litigation Reform Act, 42 U.S.C §1997e.
215. Hayes, Sufrin, & Perritt, *supra* note 43, at S22.
216. ROTH, *supra* note 1, at 287–88.
217. *Id.* at 288.
218. *Id.*

has observed, even accreditation does not guarantee consistent access to medical care – there are no surprise inspections to ensure facilities adhere to policies, especially those for reproductive healthcare, and policies may be defective in the first place.[219] In a study conducted by Kramer and others of 22 state prisons and six jails (including the country's five largest jails), they found that a third of the prisons and half of the jails did not have accredited healthcare services.[220] Half of these prisons administered healthcare through a private contract, while most jails delivered healthcare directly through the facility.[221] The institutional structures and methods of accountability are simply not present within American prisons to realize the rights of incarcerated women to reproductive healthcare.

2. United Kingdom

In the United Kingdom, prisons are required by legislation to ensure all prisoners have access to the same quality and range of health services as those in the community.[222] The NHS provides universal healthcare to all persons living in the United Kingdom, and has contracted with His Majesty's Prison Service (HMPS) to provide healthcare services in prisons.[223] As part of this partnership, the NHS took over the provision of maternity service from HMPS, which had previously employed doctors and health professionals directly.[224] The provision of universal healthcare in prisons, through a public entity, sets the United Kingdom apart from the United States.

The United Kingdom also has a range of government organizations that provide standards and expectations about the level of care incarcerated women should receive. The Inspectorate of Prisons provides an "expectations" guidance document outlining criteria for assessing the treatment and conditions for women in prison.[225] The guidance provides standards for best practice in women's prisons, including in relation to the sexual and reproductive health of incarcerated women (such as access to contraception, midwifery care for pregnant women, care for women experiencing miscarriage and support for mothers in prison).[226] Public Health England also provides guidance on the gender-specific standards women should receive in England, including support on sexual and reproductive health (such as access to contraception and abortion) as well as all aspects of prenatal and postnatal care for pregnant women (including experiences of ectopic pregnancy, miscarriage or stillbirth).[227] Currently, not all of the standards are

219. *Id.*
220. Kramer, Thomas, Patil, Hayes, & Sufrin*, supra* note 130, at 191.
221. *Id.*
222. Prison Rules 1999, r. 20 (U.K.); HOUSE OF COMMONS, *supra* note 51, at 53–54; Dabrowski & Milne, *supra* note 70, at 2.
223. HOUSE OF COMMONS, *supra* note 51, at 53–54; Dabrowski & Milne, *supra* note 70, at 2.
224. NORTH, *supra* note 177, at 11.
225. TAYLOR, *supra* note 184.
226. *Id.* at 44–45.
227. JO PEDEN, LUCY MCCANN, EAMONN O'MOORE, EMILY PHIPPS, TRACEY FORD, EMMA PLUGGE, JANE LEAMAN, SUNITA STURUP-TOFT & ANNE MARIE CONNOLLY, GENDER SPECIFIC STANDARDS TO IMPROVE HEALTH AND WELLBEING FOR WOMEN IN PRISON IN ENGLAND 97–131 (Public Health England, 2018).

being met but implementation of the standards is considered "a shared objective" for HMPS, the NHS and Public Health England.[228]

The institutions and mechanisms are in place in the United Kingdom to provide reproductive healthcare to incarcerated women. Yet, research has consistently shown there is a significant variation in the care given across the prison estate.[229] The Ministry of Justice itself has acknowledged that there are discrepancies in providing the same quality of healthcare for women in prison.[230] For example, in one Category C prison, an incarcerated woman is allowed to have her partner attend an ultrasound appointment with her, whereas in another prison she cannot.[231] As Abbott and others observe, the "circumstances of pregnant prisoners contrast starkly with best midwifery practice."[232] Adequate funding for reproductive healthcare in prisons is also one of the primary barriers to ensuring minimum standards are upheld across all prison establishments.[233]

3. Comparative Comments

While achieving universal public healthcare in the United States is, at present, an unrealistic goal, instituting public guidance and standards about the level of reproductive care expected for incarcerated women could prove useful. This has been effective in the United Kingdom at least at a rhetorical level – it has made prison authorities aware of the standards they should be meeting and raised awareness about the reproductive issues faced by incarcerated women. Guidance also provides benchmarks against which incarcerated women or their advocates can measure their treatment, and can complain to authorities or bring litigation where these standards are not being met. More detailed standards can, at least, provide greater guidance than vague legislative or constitutional "rights" to healthcare.

Increasing funding and resources in both countries to meet these reproductive healthcare standards is another goal entirely. The reality is improving reproductive healthcare in prisons will require both countries, their prison authorities, and private companies to prioritize carceral spending on healthcare.

C. THE INFLUENCE OF INTERNATIONAL NORMS ON PRISON CONDITIONS

This subsection will examine the influence of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) as a key source of international norms about the reproductive rights that women in prison have.[234] It will consider the influence (or lack thereof) of the Bangkok Rules on prison practice in each jurisdiction.

228. *Id.* at 6.
229. Dabrowski & Milne, *supra* note 70, at 8; NORTH, *supra* note 177, at 12–13.
230. HOUSE OF COMMONS, *supra* note 51, at 54.
231. Dabrowski & Milne, *supra* note 70, at 8.
232. Abbott, Scott, Thomas & Weston, supra note 2, at 660.
233. Dabrowski & Milne, *supra* note 70, at 8.
234. G.A. Res. 65/229, (Dec. 21, 2010).

The Bangkok Rules were adopted by the United Nations General Assembly in December 2010 and provide a series of standards to address the specific needs of women who offend and are incarcerated. The 70 rules provide aspirational guidance to policymakers, legislators and prison officials on a range of issues, including reproductive healthcare and hygiene, prohibition on the use of restraints for women before, during or immediately after birth, rules for children living with mothers in prison, and separation of children.[235] There is no specific monitoring body established under the Bangkok Rules. Various international monitoring bodies may use the Bangkok Rules as a reference point for their work.[236] Important work has been done by organizations such as Penal Reform International to assist all monitoring bodies to ensure their activities include gender-specific consideration of incarcerated women and encourage states to comply with the Rules.[237] As Penal Reform International has identified, implementation of the Bangkok Rules around the world remains piecemeal.[238] Indeed, in the 10 years since the adoption of the Rules, the global prison population increased by 17 percent (over 100,000 women) and continues to rise at a faster rate than the general prison population.[239] It thus remains to be seen how effective the Bangkok Rules have been in transforming prison practice.

1. United States

It appears that the general hostility to international norms in the United States does play a role in how the Bangkok Rules are implemented and directly referred to in prison policy and practice. Indeed, it was difficult to find any references to the Bangkok Rules in advocacy reports or in court decisions.[240] The United States has typically ratified few international treaties, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which remains unratified.[241] Further, most international treaties concerned with human rights are not directly enforceable in domestic American courts.[242]

---

235. *See id.* at ¶ 2(2), 5, 22, 24, 26, 48–52.

236. PENAL REFORM INTERNATIONAL, WOMEN IN DETENTION: A GUIDE TO GENDER-SENSITIVE MONITORING 2–6 (2015) (including the Committee on the Elimination of Discrimination against Women) [hereinafter CEDAW COMMITTEE].

237. *Id.*

238. PENAL REFORM INTERNATIONAL, GUIDANCE DOCUMENT ON THE BANGKOK RULES: IMPLEMENTING THE UNITED NATIONS RULES ON THE TREATMENT OF WOMEN PRISONERS AND NON-CUSTODIAL MEASURES FOR WOMEN OFFENDERS 3 (2021).

239. *Id.*

240. After searching legal databases I could not find any court decisions in the United States citing the Bangkok Rules. My searches only revealed two relevant law review articles: Rosalind Major, *Discrete and Insular and Shackled: An Equal Protection Argument to Attack Policies and Practices Allowing for the Shackling of Pregnant Prisoners*, 30 CORNELL J.L. & PUB. POL'Y 159 (2020); Christina Scotti, *Generating Trauma: How the United States Violates the Human Rights of Incarcerated Mothers and their Children*, 23 CUNY L. REV. 38 (2020). Advocacy organizations also do not tend to refer to the Bangkok Rules.

241. VIANO, *supra* note 14, at 819.

242. *Id.* at 820.

While the United States did play an important role in the development and adoption of the Bangkok Rules, there has been inertia in implementing the Rules domestically.[243] Speaking about the practice of shackling incarcerated women in the United States specifically, Emily Viano has observed it is "quite uncertain and improbable" that domestic courts will hold states to account to change these practices in order to observe the Bangkok Rules.[244] Viano considers that "American courts, to the highest level, are notorious for ignoring international treaties and prevailing standards."[245] However, some continue to argue that international obligations, such as the Bangkok Rules, should inform the jurisprudence of United States' courts.[246] It would take a significant amount of time, resources, and political will in order to introduce and implement the Bangkok Rules in the United States.[247] Given the current approach to date, I consider this is unlikely to occur.

2. United Kingdom

The Bangkok Rules are referred to more frequently by researchers and policymakers in the United Kingdom when examining the standards and conditions experienced by women who are incarcerated.[248] Dabrowski and Milne have referred to the Bangkok Rules as offering a "foundational basis from which reproductive healthcare and connected rights for imprisoned women stem" and consider that the Rules bring corresponding obligations for the British Government and state agents who operate in prison.[249] The British Government also reports to be "supportive" of the Bangkok Rules and the Rules are specifically referred to by the Ministry of Justice and NOMS as being "very much in line with current government policy on female offenders."[250] While the Bangkok Rules are referred to by policymakers and researchers in the United Kingdom, these references are often fleeting – the Rules are considered normative aspirations, but not individualized targets that must be met.

3. Comparative Comments

Overall, it appears the international norms espoused in the Bangkok Rules have little substantive influence in either country. This could, in part, be because the Rules are not monitored by their own specific international human rights body. While a range of different monitoring bodies may refer to the Rules, there

243. *Id.* at 821, 865.
244. *Id.* at 866.
245. *Id.*
246. Major, *supra* note 240, at 167.
247. VIANO, *supra* note 14, at 866.
248. *See e.g.*, Dabrowski & Milne, *supra* note 70; Spurr, *supra* note 161; Andrea Huber, *Women in Criminal Justice Systems and the Added Value of the UN Bangkok Rules, in* WOMEN AND CHILDREN AS VICTIMS AND OFFENDERS: BACKGROUND, PREVENTION, REINTEGRATION 35 (2016).
249. Dabrowski & Milne, *supra* note 70, at 2–3.
250. Spurr, *supra* note 161, at 297, 331.

is no method of accountability for states that fail to comply with their standards. Indeed, there appears to be general unawareness and disregard for the international rules.[251] Until the Bangkok Rules are enshrined in domestic law in each country, there are methods of international accountability, or increased awareness is raised by United Nations agencies, it is unlikely the Rules will have any tangible effect on the conditions faced by incarcerated women in these two nations.

D. LEGAL APPROACHES TO IMPROVE ACCESS TO REPRODUCTIVE HEALTHCARE

This final subsection will examine the different approaches adopted in each jurisdiction that have sought to improve conditions for incarcerated women. The United States has tended to see social movements emerge in this space, which have used strategic litigation to achieve change on the ground. By contrast, strategic litigation is not common in the United Kingdom to challenge the care given to incarcerated women. Rather, government oversight and inquests play a greater role in holding prison authorities to account.

1. United States

Strategic litigation is often pursued by advocacy groups in the United States to effect change for incarcerated women. I consider two examples of such litigation below.

Nelson v. Correctional Medical Services was the first federal court of appeals case to consider the use of shackles on pregnant prisoners.[252] Shawanna Nelson was represented by the American Civil Liberties Union (ACLU), and several advocacy groups also filed amicus briefs in support of her claim, including the Center for Reproductive Rights, the National Women's Law Center and the National Women's Prison Project. Ms. Nelson, a Black woman, brought an Eighth Amendment challenge against a private medical service provider as well as the Arkansas Department of Corrections. Ms. Nelson was six months pregnant when she was sentenced to a term of imprisonment in Arkansas. When she went into labor while in prison, she was transported to a hospital facility outside of the prison. Her pain was so severe that she could hardly walk, but she was placed in handcuffs and leg restraints during her transport to the hospital. Once admitted to hospital, her ankles were shackled to her hospital bed, which caused her significant injuries. In an *en banc* opinion, the Eighth Circuit ruled that the use of shackles during childbirth violated Ms. Nelson's Eighth Amendment rights. It found the individual officer ignored the risks to her by applying shackles, yet, the Court dismissed her claims against the director of the prison.[253] Although

---

251. Marie Claire Van Hout, Simon Fleißner, & Heino Stöver., *#MeToo: Global Progress in Tackling Continued Custodial Violence Against Women – The 10-Year Anniversary of the Bangkok Rules*, 24(2) TRAUMA, VIOLENCE & ABUSE 1, 8 (2021), https://perma.cc/4MTE-LDB3.

252. Nelson v. Corr. Med. Servs., 583 F.3d 522. (8th Cir. 2009). *See also* Priscilla A. Ocen, *Punishing Pregnancy: Race, Incarceration, and the Shackling of Pregnant Prisoners*, 100 CAL. L. REV. 1239, 1281–1283 (2012).

253. *Nelson*, 583 F.3d at 529–30, 534–36.

successful on appeal, Ms. Nelson was only awarded one dollar in compensatory damages by a jury.[254]

In *Doe v. Arizona* an incarcerated pregnant woman successfully sued to obtain an abortion.[255] One day prior to her sentencing, "Jane Doe" learned that she was pregnant. Nineteen years old, with a four-month jail sentence ahead of her, Doe decided she wanted to terminate her pregnancy. She asked the prosecutor if she could defer her sentencing long enough to obtain an abortion, but this was declined. She tried to obtain an abortion once in jail but encountered several obstacles, including restricted telephone use, difficulties in hiring an attorney, and satisfying an unwritten abortion policy decreed by Sheriff Joe Arpaio who ran the jail. After several attempts, Doe was able to engage ACLU attorneys, who had worked on similar cases in other states. Eight weeks after she first went into custody, the Court ordered the sheriff to take Doe to a clinic to obtain an abortion.

While there remain obstacles in being able to fund and bring such litigation, there are many benefits to strategic litigation in this area. If the woman's claim is successful, she may be entitled to compensation or injunctive relief to provide her with the care she needs. Such litigation also has symbolic value in holding prison authorities to account for their treatment of women and in raising awareness about the conditions experienced inside prison walls.

2. United Kingdom

The United Kingdom has less of a focus on strategic litigation, and instead prioritizes government oversight and inquests as avenues for holding prison authorities to account.

In 2018 the Ministry of Justice commissioned Lord Farmer to undertake a review considering the needs of female offenders and how to strengthen their ties with children and family in the community.[256] The report specifically considered the needs of incarcerated mothers and the impact of maternal imprisonment on children. The review made several recommendations with the aim of improving outcomes for women and mothers in custody, and the Ministry of Justice has an ongoing workstream to implement these recommendations.[257]

Recently, the Justice Committee of the House of Commons published its own inquiry into the treatment of incarcerated women.[258] It examined progress made by the British Government in reducing the number of women in custody and improving custodial conditions for women since the Ministry of Justice published

254. Ocen, *supra* note 252, at 1283.

255. Doe v. Arpaio, 150 P.3d 1258 (Ariz. Ct. App. 2007); ROTH, *supra* note 1, at 293–93. This case was litigated prior to the Supreme Court's decision in Dobbs, *supra* note 117, and may well be decided differently today.

256. LORD FARMER, *supra* note 62.

257. *Id.* at 7–16; HOUSE OF COMMONS, *supra* note 51, at 56.

258. HOUSE OF COMMONS, *supra* note 51.

its Female Offender Strategy in 2018.[259] The report raised several concerns about the lack of progress made by the Government as against the Strategy and made several recommendations to reduce the incarceration of women, improve research about mothers in prison, and improve general healthcare and conditions for incarcerated women.[260]

The Prison and Probation Ombudsman also provides a useful source of accountability to investigate the care and conditions for incarcerated women in the United Kingdom. The Ombudsman carries out independent investigations into deaths in custody as well as complaints made by people in prisons. The Ombudsman has carried out several high-profile investigations into the care received by incarcerated women, including into the deaths of two newborn children in 2019 and 2020.[261] Its investigations into the deaths of these newborns in women's prisons have been praised by the House of Commons for identifying "serious failing in the care and management" of incarcerated women.[262] Aware that incarcerated women often complain to prison authorities and the Ombudsman less than their male counterparts, the Ombudsman has also conducted specific outreach programs to incarcerated women to encourage them to come forward so that their concerns can be addressed.[263]

3. Comparative Comments

While the strategies adopted in the United States and United Kingdom are different, they share similar goals: they seek to raise awareness about the conditions experienced by incarcerated women, hold prison authorities to account for a lack of care and attempt to change policies and practices to improve conditions for women in prison. Indeed, comparing the strategies employed in each country can be useful to developing creative legal solutions to improve the conditions faced by incarcerated women. Applying the British mechanisms in the United States would be difficult because of the different government structures and lack of oversight mechanisms in the United States. However, given the fact that prison authorities have a legislative duty to provide incarcerated women with comparable healthcare as in the community,[264] strategic litigation could be used in the United Kingdom to further hold authorities to account (such as by way of judicial review of HMPS, the NHS and the Ministry of Justice).

IV. CONCLUSION AND RECOMMENDATIONS

Locked behind bars and out of sight, the reproductive lives of incarcerated women across the Atlantic are often invisible to the public. As a result, little is

---

259. *Id.* at 5–6.

260. *Id.* at 74–81.

261. MCALLISTER (2021), *supra* note 157; MCALLISTER (2022), *supra* note 157.

262. HOUSE OF COMMONS, *supra* note 51, at 55. *See also* discussion *supra* in Section III.

263. *Why don't women complain?,* PRISON AND PROBATION OMBUDSMAN (Dec. 2, 2022), https://perma.cc/QH8T-MHMQ.

264. Prison Rules 1999, r. 20 (U.K.).

known about the reproductive control these women face in all aspects of their care, whether as a woman trying to access contraception, as a pregnant woman seeking prenatal care, a mother caring for a newborn in prison, or a woman who has been forcibly sterilized without her consent. Incarcerated women in both the United States and United Kingdom tend to be treated as second-class citizens – they are deemed "unfit" to receive reproductive healthcare or to exercise their reproductive autonomy. This article has sought to shed light on the reproductive lives and experiences of incarcerated women to advocate for change in the conditions they endure.

By comparing the approaches taken across the Atlantic, it becomes evident that the carceral model is failing women in both countries. While the United States and United Kingdom share this common problem, they face different barriers which prevent incarcerated women from obtaining reproductive justice. In the United States, those obstacles include the model of privatization and mass incarceration, a lack of universal healthcare, and a failure to implement effective methods of prison oversight. In the United Kingdom, those obstacles include a dearth of research about the reproductive experiences of incarcerated women, a lack of strategic litigation seeking to hold authorities to account, and a failure to implement government guidance and standards. Both countries have also failed to implement the international norms espoused in the Bangkok Rules.

A comparative approach has identified several recommendations that need to be addressed in order to meaningfully change the reproductive experiences of incarcerated women. These include:

a) An increased need for research about the reproductive conditions incarcerated women face, particularly as these conditions impact access to contraception, abortion and menopause care, as well as the prevalence of sterilization practices in the United Kingdom. In writing this article, it became evident that there is little existing research about the reproductive experiences of women who are incarcerated. We need to accurately understand the conditions faced in prison in order to respond to the needs and experiences of women through changes in operations, policy and advocacy efforts.
b) Increased accountability and monitoring of implementation of the Bangkok Rules, both at the international and domestic levels. As detailed, the Bangkok Rules provide strong normative standards for the care of women who are incarcerated. Yet, they currently lack teeth. In order for the Rules to achieve tangible change to the conditions experienced by women in prison we must take these Rules seriously, increase monitoring of states' implementation of the Rules, and increase accountability where the Rules are breached.
c) Reduction in the privatization of prisons and prison healthcare, particularly in the United States. While this will take many years to achieve, the starting point will be to shift to using public healthcare providers within prison. Privatized prisons and privatized healthcare within prisons have a primary

profit motive and there is a lack of state or federal oversight over the healthcare they provide. Reducing the role of private companies in the prison system will require increasing the role of the state and, accordingly, public oversight mechanisms that can hold the state to account for the conditions within prisons.

d) Greater state and federal oversight over the conditions in carceral facilities in the United States. Where prisons are run by state and federal authorities, there needs to be additional oversight mechanisms to hold authorities to account for the poor conditions within prison, such as an independent ombudsman or agency that can independently investigate complaints about reproductive care, make recommendations to authorities, and support women in knowing their rights to reproductive healthcare.

e) An increased use by courts of non-custodial alternatives to sentence women, particularly for pregnant women (including those with substance abuse disorders) and women who are primary carers of their children. This will ensure that women who offend remain in the community as much as possible. Of course, there is no guarantee that women will receive adequate reproductive care in the community, but this will prevent more women from experiencing the worst consequences of incarceration.

f) Greater use of litigation strategies, such as judicial review, in the United Kingdom to hold government authorities to account for the poor conditions within women's prisons. As this article has shown, strategic litigation is currently underutilized in the United Kingdom. The experience of such litigation in the United States has proved fruitful in upholding the rights of women who are incarcerated and provides another mechanism to protect and support women who are incarcerated.

The reproductive oppression faced by incarcerated women will not disappear overnight. However, this issue must be prioritized by both countries in order to ensure that some of the most vulnerable women in these two nations can receive the care and support they need to reintegrate back into society. Analyzing this issue through the lens of reproductive justice helps us to appreciate the individual harms suffered by incarcerated women as well as the impact that imprisonment has on their families and communities.[265] Indeed, "the true measure of any society can be found in how it treats its most vulnerable members".[266] If that is true, then the experiences of our most vulnerable women certainly reflect poorly on these two nations and must be urgently addressed.

265. ROTH, *supra* note 1, at 299.
266. This saying is widely attributed to Mahatma Gandhi.